27 :A.

Previous references

1905-6
(Sep Rev)

Ex File No. 27 of 03
Serial Nos. 1654

Later references.

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

Part B. for September

SUBJECT.

Remission of the Court fee due from Ramasami Chetti Appellant in appeal 244 of 98-99 in the file of the Chief Court

FILE No. Ex. 27 of 1903-04.

Remission of Rs. 855, being the amount of Court-fee due from one Ramaswami Setti, appellant in Appeal Suit No. 244 of 1898-99, on the file of the Chief Court of Mysore.

1 From the Deputy Commissioner. Bangalore District. No. 1031. dated the 21st March 1903.
Solicits sanction for the above remission, as the amount is reported by the Amildar to be irrecoverable.

2 To the Deputy Commissioner, Bangalore, No. Fl. 1837, dated the 4th May 1903.
Observes that the decree is not three years old and that it is not clear what has been done with the appellant's interest in the family house, and requests submission of a further report on the expiry of three years from the date of the decree.

3 From the Deputy Commissioner, Bangalore, No. 230, dated the 7th September 1905.
Forwards copy of a docket dated the 4th June 1904, from the Public Prosecutor, Nundydroog Division, to say that the said interest was once caused to be sold for realizing the Court-fee of Rs. 125 decreed against the said Ramaswami Setti in another original suit, that none came forward to purchase the same and that any attempt to take execution on the property was of no avail.

4 To the Deputy Commissioner, Bangalore District, and the Comptroller, No. Fl. 2094-5, dated the 19th September 1905.
Sanctions the remission recommended.

G. R. S. 11] 190 5

GENERAL AND REVENUE SECRETARIAT.

(516)

NOTES.

4 File No. 27.03

FILE HEADING.

Remission of Rs 855/- being the amount of Court fee due from one Ramaraman. Chetty appellant in appeal suit no 2440 of 98-99 on the file of the Chief Court of Mysore

From The Dy Comr Bangalore Dist

No. 603/ Dated the 21/3/03 Received 24/3/03

Diary No. 3336	Enclos. 1 & file Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Solicits sanction for the above remission as the amount is refunded by the Executive of Bangalore & is irrecoverable

NOTES AND ORDERS.

2 To The Dy Comr, Bangalore

No H 837 of the 4 May 1903

Observes that the decree is not yet 3 years old and that it does not explained what has been done

NOTES—First sheet.

MGCPB—30,000—17-2-05.

G.R.S. 12]
General and Revenue Secretariat.

& File No. 27 of 1903

Serial No.

with the appellants interests in the family house and requests the extension of a further period of 3 years from the date of the decree viz 10th July 1907

3 From the Dy Comr Bangalore No 230 & the 7th Sebles forwards copy of letter No a docket of the 4th June 1904 from the Public Prosecutor Bangalore Division, to say that the said interest was once caused to be sold for realising the Court fee of Rs 1/2/- decreed against the said Ramaswamy Chetti in the original suit that none came forward to purchase the same & that any attempt to take execution on the decree was of no avail. Draft calling for official information to be laid for official orders

True
9.9.05

NOTE.—Contn. sheet.

MGCPB—50,000—17-2-05

G.R.S. 12]

General and Revenue Secretariat.

Ex File No. 27 of 1903

Serial No.

The decree of Chief Court is more than three years old. Is the right of government to recover the Stamp duty not barred? Before taking further action the opinion of Judicial Branch may be obtained.

If the right to recover be not barred the next question for consideration is whether Plaintiffs one-sixth share in the ancestral family house is available for sale. Once before in another case (P.C. 6/02-03) the one-sixth share was appears to have been put up for sale but there were no bidders. The reason is not apparent Is Plaintiffs' one-sixth share in possession of the co-sharers If so they may be served with a notice to show cause why it should not be proceeded against.

To Br III for favour of opinion

13-9-05

J. Ellis '66

The period of limitation for an application for execution of a decree for money (to which the order as to Court-fees is equivalent) is three years from the date of the decree Vide Article 179 of the Limitation Act. In the present case I understand that no application for execution has been

NOTE—Contn. sheet.

MGCPB—50,000—17-2 05

Serial No.

made after more than three years have elapsed, the right to apply is barred

Put before Hon'ble Mr. Secretary

16.9.05

for II.

Please put up the A. Act quoted by the Deputy Secretary in his note

Ruled.

21
15-9-05

Please see page 481 of the Mysore Code Vol. I. put up A Copy of the Civil Proc Code

Ruled

Issue
15.9.05
16.9.05

Draft sanctioning the amount being written off the accounts

21
16.9.05

Passed
16.9.1905

21
16.9.05

4 To the Director Land Records & Consolidation

No. H2094-5 of the 9.9.05

Sanctions the amount recommended

(1)

1902/03

From,

The Dy. Commissioner,
Bangalore District.

A 3336.
03

To The Secy to the Govt
of Mysore
Rev Frnl Depth

Dated 21st March 1903

Despatched 23rd

Received

General No.

D No. 1031

Enclosure No. one petition

Requesting that the sum of
Rs 855 due in re Ramaswami
Chetty appellant in appeal No
246 of 98-99 being the Court fee
may be written off the accounts as
irrecoverable as the Amildar
reports that he owns no property

The decree is not yet
3 years old. It is not
explained what has
been done with the
appellt's interest in the
family house

Draft papers that
this should be awaited
& submit for approval.

17/4/03

Draft submitted
to the Dewan

24/4/03

Draft Subd
23/5/03

7941
24.4.03

24/4/03

Subd. with a draft.
8/4/03

Bangalore District
Dy. Commissioner's Office
Bangalore 21st March 1903

Dr. No 1031
Ex: Order

From,

H. H. Sharbes Esqr
Dy. Commissioner,
Bangalore District

To,

H. V. Ranjmunayya Esqr Mysd
Sert to the Govt of Mysore
Rev Stat Depts

Sir

I have the honor to state that intimation was given to me by the Registrar of the Chief Court of Mysore in his docket No 673/382 dated 22nd July 1902, that a sum of Rs 855/ was due to Government by Ramaswamiah, a defendant in appeal No 244 of 1898-1899, being the Court-fee which he would have on his memo of Appeal, paid, had he not been permitted to appeal in forma pauperis. Accordingly, an order was

was issued to the Amildar of Bangalore in which place the said Ramaswamy Chetty is said to have been residing to take steps for the recovery of the amount. In reply the Amildar reports that the said Ramaswamy Chetty owns no property on which he may proceed to recover the amount and attaches a memorandum drawn up by the respectable inhabitants of the locality in support of his report. Copy of the judgment in this appeal case subsequently applied for and received with docket No. 5218/3468 dated 14th March 1903 from the Registrar of the Chief Court does not also disclose any sort of clue as to any property the said Ramaswamy Chetty may be in

in possession of. Under these circumstances I request that the Government will be pleased to strike off the accounts, the full amount of Rs 855/ as unrecoverable.

2. The copy of the judgment and the vernacular correspondence ending with the Amildar's report No 424 Dated 7th January 1903 is, herewith, enclosed for reference.

I have the honor to be,
Sir,
Your most obedient servant,

Dy. Commissioner,
Bangalore District.

In the Chief Court of Mysore, at Bangalore.

Wednesday the 10th day of July 1901.

Present.

Hon. Justice A Ramachandra Iyar, offg: Chief Justice.

and

Hon. Justice A Rangaswami Iyengar, Justice.

Appeal No 244 of 1898-99.

Ramaswami Chetty — Appellant (plaintiff).

Vs

B. Narain Setty, and 13 others. — Respondents

Appeal against the decree of the Court on the Original Side, in Original Suit No 26 of 1898-1899.

This appeal, coming on for hearing on Friday the 5th day of July 1901, the Court, delivered the following:-

Judgment.

The plaintiff and defendants 6 & 7 are members of the same family. Defendants 1 to 5 are descendants of a daughter of-

of Lingalaraja Chetty who was a brother of the plaintiff's paternal grandfather. All these persons lived in one house and jointly enjoyed property as if they formed an undivided family. They divided the property in May 1878 into two shares and gave one share to the defendant and his brother. The other share was divided among the plaintiff and 6th defendant's father and 7th defendant. The plaintiff was an infant at the time. His mother was a party to the instrument of partition. The plaintiff sued for cancellation of the document upon the ground that the defendants 1-5 had no right to a share of the property and that the plaintiff ought to have been given one-third and not one-sixth share. The suit was dismissed with costs. The plaintiff has appealed from the decree.

It has been urged that the Advocate who had filed the suit

did

before cosnes were settled, that there was no time to get back the papers which had been entrusted to him, that the plaintiff was not able to give full instructions to his Advocate on the date fixed for the trial, and that in the interests of Justice another opportunity should be given him to adduce further evidence. The record shows that the plaintiff had engaged another Advocate long before the date of trial. He relied only upon judgments or orders or depositions or such documents, copies of which might have been easily obtained if he was inclined to proceed with the trial without delay. The suit was fixed on 16th 17th and 18th January 1899, when, at his request, the trial was adjourned to 30th idem, since he represented to the Judge that he had to examine only two more witnesses, and that he would himself produce them before the Court upon the adjournment date, he brought his two witnesses, examined one, and dispensed with the other. It does not appear that

reasonable

reasonable opportunity was not given to him to adduce all his evidence.

Another contention of the appellant is that his application to recall the 2nd defendant for further examination ought to have been granted. The Judge's notes show that the appellant examined the defendant as his 1st witness on 16th & 17th January, that on 18th January the defendants' Advocate closed his case and that the trial was adjourned to 30th Idem for the examination of two witnesses whom the appellant undertook to produce without summons. It was on 27th January that his Advocate applied for permission to recall the defendant. The rejection of the application does not appear to be wrong, since the parties had virtually closed the case on 18th January and there was nothing else to be done on 30th Idem except to examine the two witnesses who

had

had not been summoned to attend on 16th Idem.

Plaintiff seeks to set aside the deed of partition upon the ground that defendants 1-5 had no right to obtain half of the family property for their share.

It appears that these defendants claimed a share when plaintiffs' father was alive In 1875 a Kattadaka was executed to three arbitrators to settle the disputes and effect a division among the parties. If plaintiffs' father left it to a Punchayeth to decide whether any and what share ought to be given to defendants 1-5, it is good evidence of the right claimed by these defendants

On 28th March 1876 plaintiffs father, 1st defendant and others mortgaged a shop to a Bank The Shop belonged to the family of plaintiff, and 6th and 7th defendants The conjunction of the 1st defendant with plaintiffs' father proves that

that he had an interest in the mortgaged property.

The 6th defendant's father was a party to the division. He would not willingly give away half of the property to defendants 1–5 if they had no right thereto. It is said that he was there under obligation to 1st defendant. There is no satisfactory evidence to prove that he, acting from corrupt motives, gave away half of the property.

The 6th and 7th defendants had attained the age of majority in 1878. The evidence which they gave in the former suit (O.S. 724 of 1893-94) shows that when the division was made they knew that a share was given to defendants 1–5, and that their father got much less than what he was entitled to. They did not institute a suit to get the document cancelled. They have as good a right as the plaintiff to pray for

setting

setting aside the document

The conduct of the plaintiff's father, and of 6th defendant's father and of 6th and 7th defendants, satisfies me that the division was honestly made.

The plaintiff prayed for a declaration that the decrees which had been made against him in O.S. No. 42 of 1883, and O.S. No. 287 of 1887 had been fraudulently obtained by 1st defendant. The decrees are prima facie binding upon him, since he was represented by his mother in the said suits. He adduced no evidence to prove the alleged fraud.

The appeal fails, and is hereby dismissed with costs.

A True Copy

Rajathurai

Registrar

Ans

11

Ex. 27 of 1903-04

(2)

To

The Deputy Commissioner
Bangalore Dist.

Dated 4/5 May 1903
No 7(1837) Ex. Dy.

The Dy: Comr's letter No D 1031 dated 21st March 1903 soliciting sanction to write off the accounts as irrecoverable a sum of Rs 855 being the court fee which one Ramaswamy Setti, appellant in appeal No: 244 of 1898-99 on the file of the Chief Court should have paid on his memo of appeal had he not been permitted to appeal in forma pauperis

Has the honour to observe that the decree

is not yet three years old and that it ~~has~~ is not explained what has been done with the appellants interest in the family house. The Deputy Comr is requested to await till the expiry of three years from the date of the decree and submit a further report.

2. The Kannada papers are returned.

By Order

Secretary
23/4/03

26.IV.03

23/4/03

(3) 11 9 Nov 8-9-05 D.C.O.Clk

1905/06

From The Deputy Commissioner, Bangalore District

To The Secy: to the Govt of Mysore, Revenue Department

Dated 7th September 1905

Despatched

Received

General No.

S No. 230

Enclosure No. one file

Secy's No Fl 1837 of 4th May 1903

Reports re recovery of the Court fee of Rs 855 from one Ramaswamy Setty, appellant in appeal Case No 246 of 1895-99 on the file of the Chief Court of Mysore

12

Deputy Commissioners office
Bangalore District
Dated 6th September 1905.

From,

D. Devaraja Urs Esquire
Deputy Commissioner
Bangalore District

To,

B. K. Venkatavaradacharyar Esquire
Secretary to the Government of Mysore
General and Revenue Department.

Sir,

With reference to your No. F.C. 1837 dated 4th May 1903, re recovery of the court fee of Rs 85/- from one Ramaswamy Setty appellant in appeal case No. 244 of 1898-99 on the file of the Chief Court Mysore, I have the honor to state that the Public Prosecutor was asked to proceed against the appellants' interest in the family house referred to in the docket under reply. He has

written to say that the said interest was once caused to be sold for realizing the Court fee of Rs 125/- decreed against the said Ramaswami setty in original Suit No. 26 of 1898-99 on the file of the same court in which also he was allowed to sue in forma pauperis and as none came forward to purchase the same, this he says, testifies to be fact, that the appellant does not possess any property which may fetch a price - and that therefore any attempt to take execution on the property was of no avail. A copy of his letter is herein enclosed for kind perusal

2 In the above circumstances, I think, that as already proposed the amount due may be written off the account.

3 The vernacular record - notes - to the Subject are also submitted.

I have the honor to be
Sir
your most obedient Servant

Deputy Commissioner
Bangalore District

Docket dated 4th June 1904 from the Public Prosecutor Bangalore Division to the Deputy Commissioner Bangalore District

With reference to your cantarese No. 1504 dated 14th May 1904 requesting me to recover Rs 85/5 the institution fee due to government from Ramaswami-Setty on a decree passed against him in forma pauperis by the Chief Court of Mysore

I have the honor to inform that a copy of the original decree in OS no 26 of 1898-1899 passed against the same Ramaswamy Setty with your office cantarease No. 16 dated the 29th June 1901 was sent to me to recover from him Rs 12-0. I got his property attached & sold in execution case No. 6 of 1902 03 on the file of the Chief Court and in the sale no one came forward to purchase the property even for a fee, the case therefore is ended.

The

16 The above shows that the man does not possess any property which may fetch any bid and as any further attempt to get the same property sold appears useless. I send back the records now send as also the former ones sent to me.

"Copy"

D Devanarayana.
Dy Commissioner
Mill Bangalore District

17

G.R.S. 28]

24. File No. 27-03
Serial No. 4

Diary No. of letter replied to 1064

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

C.J.B

READ.—

Correspondence

, the 19 Septr 1905

ending with letter no 230,

Date of issue do

dated 9 Septemeber 1905 from the Deputy Comr of the Bangalore District soliciting Sanction to write off the accounts as irrecoverable a sum of Rs 855/ being the Court fee which one Ramaswamy Chetti, appellant in Appeal Suit no 244 of 1898 got on the file of the Civil Court should have paid on his memo of appeal had he

Signed by Mr Satyanarayana Rao

ORDER THEREON.—No

over

SUBJECT

8

not been furnished
to official informants

Execution No. H 2094-5 dt 19-9-05
E 727-03-4

Sanctioned

16.9.05

Secy

To The Dy. Comr. Bangalore

returning records
The Registrar, Civil Court

True
9.9.05
MS

16-9-05